S.B.Civil Misc. Appeal No.522/1994
Sumer Mal Bhansali vs. Sawalaram

Date of Order: 17.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.K.Parihar for the appellant.
Mr. Pradeep Shah for the respondent.

This appeal is against the order dated 2.8.1994 passed by the learned District Judge, Jalore in Appeal Order No.5/92.

Brief facts of the case are that the appellant-plaintiff filed the suit for recovery of Rs.2667/- and interest of Rs.233/-, total Rs.3000/- in the court of Munsif, Sanchore. The objection was raised about the territorial jurisdiction of the Munsif Court, Sanchore. Both the parties led evidence and the trial court decided issue in favour of defendant-respondent and held that the court of Munsif, Sanchore has no territorial jurisdiction to hear the suit. However, while holding so, the trial court vide judgment and decree dated 13.1.1992 instead of returning the plaint, dismissed the suit of the plaintiff. The plaintiff, present appellant, preferred appeal under Order 43 Rule 1(a) before the Court of District Judge, Jalore. The learned District Judge, Jalore vide judgment dated 2.8.1994 upheld the finding of fact with respect to accrual of cause of action of territorial jurisdiction of the court at Bhinmal. However, the appeal of the present appellant-plaintiff was

partly allowed by the first appellate court and the first appellate court held that the trial court committed error of law in dismissing the plaint on the ground of lack of jurisdiction of the trial court. The first appellate court held that the suit could have been returned for presentation in proper court under Order 7 Rule 10,C.P.C. Dissatisfied with the order of the first appellate court, the present appeal has been preferred by the appellant.

Heard learned counsels for the appellant.

Firstly the present appeal is not maintainable in view of the order dated 2.8.1994. Since I do not find any merit in this appeal which could have been converted into revision petition, therefore, no useful purpose would be served by converting the appeal into the revision petition as the appeal as well as the revision both lie to the High Court and the appeal could have been converted into revision petition by this Court.

It is clear case of recording of finding of fact by the two courts below with respect to the jurisdiction of the court and, therefore, that finding cannot be interfered by this Court while exercising revisional jurisdiction. Otherwise also, after going through the reasons given by the two courts below, I do not find any illegality in the orders of both the courts below whereby they held that the court at Sanchore has no jurisdiction. In view of the above, the only order could have been passed was of return of the plaint for presentation of the plaint in

proper court under Order 7 Rule 10,C.P.C. It appears that the record was called by this Court and, therefore, the suit has not been presented in the transferee court, therefore, the appellant is permitted to take the plaint from the Munsif Court, Sanchore and may present the suit in the court at Bhinmal in pursuance of the impugned orders on or before 5.12.2006. Both the parties shall remain present in the court of Civil Judge (JD), Bhinmal on 5.12.2006. The record be sent forthwith to the court below.

The appeal is, therefore, disposed of as indicated above.

(PRAKASH TATIA),J.

mlt.